

And the grantor reserved "the full right and authority, at any time or times, to direct any change or alteration in the disposition of the income and proceeds of the trust estate," or to remove any trustee or fill any vacancy however occurring.

It will be observed, therefore, that the instrument was designed to convey every interest in property that the grantor had. Considering its language and careful provisions, its purposes and the control reserved to the grantor of the trust and the disposition of funds, it would be a narrow construction of it to hold that the interest of the grantor in the Lahainaluna school did not pass by it, whether such interest was a right to receive a conveyance of the school or of the \$15,000 which was to be in lieu of such conveyance. In other words, to completely enforce the rights and interests of the mission in the school and devote it or the proceeds from it to the purposes of the trusts which were created.

The judgment is reversed and the cause is remanded with directions to enter judgment for appellants as prayed for.

MR. JUSTICE BREWER took no part in the decision.

UNITED STATES *v.* SHIPP.

INFORMATION IN CONTEMPT.

No. 4. Original [No. 5, original, of October Term, 1908]. Opinion delivered June 1, 1909.—Sentence pronounced November 15, 1909.¹

On June 1, 1909, after the opinion and judgment of the court (214 U. S. 403) were delivered, *The Solicitor General* moved in open court for sentence, and thereupon the defendants Shipp, Gibson, Williams, Nolan, Padgett and Mayes, moved for leave to present petition for rehearing and the court ordered that they be allowed thirty days to present a

¹ For a full report of the proceedings in this case see 214 U. S. 386.

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Judgment of the Court.

motion for leave to file a petition for rehearing and that they be remanded to custody to be released on their respective recognizances in \$1,000 each to be taken by the District Judge of the United States for the Eastern District of Tennessee. On June 7, 1909, a certificate of the said judge that such recognizances had been taken was filed in this court.

The motions for leave to file petitions for rehearing were received by the clerk of this court during vacation (June 1–October 11, 1909). November 1, 1909. Leave to file petitions for rehearing denied and the above named six defendants ruled to appear for judgment on November 15, 1909.

On November 15, 1909, *Mr. Solicitor General Bowers* announced to the court that the said six defendants were present in court in response to the rule issued against them, and asked that sentence be pronounced.

These defendants were then called to the bar by the clerk.

The Chief Justice announced the judgment of the court as follows:

You, Joseph F. Shipp, Jeremiah Gibson, Luther Williams, Nick Nolan, Henry Padgett and William Mayes, are before this court on an attachment for contempt.

On return to a rule to show cause you have presented such evidence as you were advised and been fully heard orally and on printed briefs, and after thorough consideration you have been found guilty. You have also been permitted severally to present petitions for rehearing and move that leave be granted to file them, which after consideration have been denied.

The grounds upon which the conclusion was reached are set forth in the opinion filed herein on Monday, May 24, 1909, and need not be repeated, nor need we dwell upon the destructive consequences of permitting the transaction complained of to pass into a precedent for unpunished contempt.

It is considered by the court, and the judgment of the court is, that as punishment for the contempt you, Joseph F.

Shipp, Luther Williams and Nick Nolan, and each of you, be imprisoned for the period of ninety days, and that you, Jeremiah Gibson, Henry Padgett and William Mayes, and each of you, be imprisoned for the period of sixty days, in the jail of the District of Columbia. The marshal of this court is charged with the execution of this judgment.

November 17, 1909, the marshal filed a return that the judgment of the court had been executed according to the tenor thereof.

MACKENZIE *v.* MACKENZIE.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 465. Motion to dismiss submitted October 11, 1909.—Decided October 18, 1909.

A writ of error to review the judgment of the highest court of a State dismissed for want of jurisdiction without opinion.

Writ of error to review 238 Illinois, 616, dismissed.

Mr. R. G. Dyrenforth for the plaintiff in error.

Mr. Harris F. Williams for the defendant in error.

Per Curiam. Dismissed for want of jurisdiction.

RAND, McNALLY & CO. *v.* KENTUCKY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 136. Motion to dismiss or affirm submitted October 18, 1909.—Decided November 1, 1909.

A judgment of the state court affirmed without opinion on authority of previous decisions.

32 Ky. Law Rep. 1168, affirmed.

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Per Curiam.

Mr. Amos C. Miller and Mr. Wm. M. Beckner for plaintiffs in error.

Mr. Frederick S. Tyler and Mr. James C. Sims for defendant in error.

Per Curiam. Judgment affirmed, with costs. *Chanute v. Trader*, 132 U. S. 210; *Wilson v. North Carolina*, 169 U. S. 586; *Central Land Co. v. Laidley*, 159 U. S. 103; *Bacon v. Texas*, 163 U. S. 207; *Eustis v. Bolles*, 150 U. S. 361; *White v. Leovy*, 134 U. S. 91; *Electric Co. v. Dow*, 166 U. S. 489; *Pierce v. Somerset Railway*, 171 U. S. 641; *Shepard v. Barron*, 194 U. S. 553; *Rand, McNally & Co. v. Commonwealth*, 106 S. W. Rep. 238; *S. C.*, 108 S. W. Rep. 892, 32 Ky. Law Rep. 441, 1168; *Commonwealth v. Ginn & Co.*, 111 Kentucky, 110.

STRONG v. GASSERT.

ERROR TO THE SUPREME COURT OF THE STATE OF MONTANA.

No. 401. Motion to dismiss or affirm submitted November 1, 1909.—
Decided November 8, 1909.

A writ of error to the highest court of a State dismissed for want of jurisdiction on the authority of previous decisions.

Writ of error to review 38 Montana, 18, dismissed.

Mr. M. S. Gunn for plaintiff in error.

Mr. W. C. Keegin for defendant in error.

Per Curiam. Writ of error dismissed for want of jurisdiction. *McCorquodale v. Texas*, 211 U. S. 432; *Corkran Oil & Development Co. v. Arnaudet*, 199 U. S. 182; *Arkansas Southern Railroad Co. v. German National Bank*, 207 U. S. 270.

PFAELZER v. BACH FUR COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 290. Submitted November 1, 1909.—Decided November 8, 1909.

A writ of error to the Circuit Court of the United States dismissed
for want of final judgment on the authority of *McLish v. Roff*, 141
U. S. 661.¹

Mr. A. S. Gilbert for plaintiff in error.

Mr. Benjamin N. Cardozo for defendant in error.

Per Curiam. Writ of error dismissed for want of final
judgment. *McLish v. Roff*, 141 U. S. 661.

BARKER v. BUTTE CONSOLIDATED MINING
COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF MONTANA.

No. 32. Submitted November 12, 1909.—Decided November 15, 1909.

A writ of error to the highest court of a State dismissed for want of
jurisdiction on the authority of previous decisions.

Writ of error to review 35 Montana, 327, dismissed.

¹ The headnote in *McLish v. Roff* is as follows:

Under § 5 of the act of March 3, 1891, c. 517, 26 Stat. 826, "to establish Circuit Courts of Appeal," etc., the appeal or writ of error which may be taken "from the existing Circuit Courts direct to the Supreme Court," "in any case in which the jurisdiction of the court is in issue," can be taken only after final judgment; when the party against whom it is rendered must elect whether he will take his writ of error or appeal to this court upon the question of jurisdiction alone, or to the Circuit Court of Appeals upon the whole case.

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Per Curiam.

Mr. Lewis O. Evans for plaintiff in error.

Mr. John J. McHatton for defendant in error.

Per Curiam. Writ of error dismissed for want of jurisdiction. *Butte City Water Co. v. Baker*, 196 U. S. 119; *Haire v. Rice*, 204 U. S. 291; *Sayward v. Denny*, 158 U. S. 180; *Moran v. Horsky*, 178 U. S. 205; *Beals v. Cone*, 188 U. S. 184; *Iowa v. Rood*, 187 U. S. 87; *Stuart v. Hauser*, 203 U. S. 585; *Gatewood v. North Carolina*, 203 U. S. 531; *Bachtel v. Wilson*, 204 U. S. 36; *Iowa Central Railway Co. v. Iowa*, 160 U. S. 389.



JEROME H. REMICK & COMPANY v. STERN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

No. 352. Submitted November 8, 1909.—Decided November 15, 1909.

Writ of error to the Circuit Court dismissed for want of final judgment on authority of *McLish v. Roff*, 141 U. S. 661.

Mr. Moses H. Grossman for plaintiff in error.

Mr. Julius Henry Cohen for defendant in error.

Per Curiam. Writ of error dismissed for want of final judgment. *McLish v. Roff*, 141 U. S. 661; *Pfaelzer v. Bach Fur Company of Illinois*, decided November 8, 1909, *ante*, p. 584.

Per Curiam.

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NORTH CAROLINA MINING COMPANY *v.*
WESTFELDT.APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.No. 580. Motion to dismiss or affirm submitted November 8, 1909.—
Decided November 15, 1909.An appeal from the Circuit Court of Appeals (166 Fed. Rep. 706)
dismissed for want of jurisdiction on the authority of prior decisions.

CAUSE below heard before Fuller, Circuit Justice, and Morris and Brawley, District Judges, composing the court, and decree rendered January 12, 1909, 166 Fed. Rep. 706; petition for rehearing denied February 4, 1909; application for certiorari denied April 19, 1909, 214 U. S. 516; application to the Circuit Court of Appeals, Waddill, McDowell and Keller, District Judges, sitting, for allowance of appeal denied May 13, 1909; appeal granted June 12, 1909, by Goff, Circuit Judge, and motion to set aside that order denied August 21, 1909, Goff, Circuit Judge, stating: "I find myself impelled to the conclusion that the disposition by the Supreme Court of a motion to dismiss said appeal, will under the circumstances now existing best protect the interests of all the parties hereto, and will also settle a question of practice concerning which there is at this time doubt and confusion."

Mr. Joseph J. Hooker, Mr. James H. Merrimon, Mr. Hannis Taylor and Mr. Charles A. Moore for the appellant.

Mr. Julius C. Martin, Mr. Alfred S. Barnard and Mr. F. A. Sondley for the appellees.

Per Curiam. Appeal dismissed for want of jurisdiction.

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Per Curiam.

Macfadden v. United States, 213 U. S. 288; *Greeley v. Lowe*, 155 U. S. 58; *In re Winn*, 213 U. S. 458; *In re Moore*, 209 U. S. 490.

GUARANTY TRUST COMPANY v. METROPOLITAN
STREET RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 607. Motion to dismiss submitted November 8, 1909.—Decided
November 15, 1909.

An appeal from the Circuit Court dismissed without opinion on the
authority of previous decisions.

*Mr. Julien T. Davies, Mr. Brainard Tolles and Mr. John C.
Spooner* for the appellant.

*Mr. Arthur H. Masten, Mr. Matthew C. Fleming, Mr.
W. M. Chadbourne, Mr. Wm. M. Coleman, Mr. James Byrne
and Mr. Frank H. Platt* for the appellees.

Per Curiam. Appeal dismissed for want of jurisdiction.
Carey v. Houston & Texas Central Railway Co., 150 U. S. 170;
In re Lennon, 150 U. S. 393; *Cornell v. Green*, 163 U. S. 75;
Empire State-Idaho Mining & Developing Co. v. Hanley, 205
U. S. 225; *Goodrich v. Ferris*, 214 U. S. 71; *Farrell v. O'Brien*,
199 U. S. 89; *Louisville Trust Co. v. Knott*, 191 U. S. 225;
United States v. Larkin, 208 U. S. 333; *Atlantic Trust Co. v.
Chapman, Receiver*, 208 U. S. 360; *Bien v. Robinson, Re-
ceiver*, 208 U. S. 423; *Delmar Jockey Club v. Missouri*, 210
U. S. 324; and see *In re Metropolitan Railway Receivership*,
208 U. S. 90; *Guaranty Trust Co. v. Metropolitan Street Ry.*

Co., 166 Fed. Rep. 569; 168 Fed. Rep. 937; 170 Fed. Rep. 335; 170 Fed. Rep. 625; 170 Fed. Rep. 626; 171 Fed. Rep. 1014; 171 Fed. Rep. 1015; 171 Fed. Rep. 1019; *Morton Trust Co. v. Metropolitan Street Ry. Co.*, 170 Fed. Rep. 336; *Guaranty Trust Co. v. Second Ave. Ry. Co.*, 171 Fed. Rep. 1020; *Pennsylvania Steel Co. v. Metropolitan Street Ry. Co.*, 170 Fed. Rep. 623.

HELVETIA-SWISS FIRE INSURANCE COMPANY *v.*
BRANDENSTEIN.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT.

No. 481. Motion to dismiss submitted November 15, 1909.—Decided
November 29, 1909.

A writ of error to the Circuit Court of Appeals dismissed without
opinion on the authority of *Macfadden v. United States*, 213 U. S.
288.¹

¹ The pertinent headnotes in *Macfadden v. United States* are as
follows:

Although where a real constitutional question exists a writ of error can
be sued out directly from this court to the trial court under § 5 of the
act of 1891, the right to do so is lost by taking an appeal to the Cir-
cuit Court of Appeals. *Robinson v. Caldwell*, 165 U. S. 359.

The Circuit Court of Appeals does not lose its jurisdiction of an appeal
under § 6 of the act of 1891 because questions were involved which
would have warranted a direct appeal to this court under § 5 of that
act.

Where the case can be taken directly to this court under § 5, or to the
Circuit Court of Appeals under § 6, and the latter appeal is taken,
while a writ of error will lie to the Circuit Court of Appeals if the
jurisdiction of the Circuit Court rests, as shown by plaintiff's state-
ment, on grounds, one of which is reviewable by this court, it will not
lie if the only ground of jurisdiction is one where the judgment of
the Circuit Court of Appeals is final.

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Per Curiam.

Mr. Frederick B. Campbell for plaintiff in error.

Mr. William V. Rowe and *Mr. Royall Victor* for defendants in error.

Per Curiam. Writ of error dismissed for want of jurisdiction. *Macfadden v. United States*, 213 U. S. 288.

KANSAS CITY STAR COMPANY v. JULIAN.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. 85. Motion to dismiss or affirm submitted November 29, 1909.—
Decided December 6, 1909.

Where the Federal question is first raised in the petition to the highest court of the State for rehearing it is too late. *Loeber v. Schroeder*, 149 U. S. 580.

Where the judgment of the state court rests on non-Federal grounds broad enough to sustain it this court cannot review it under § 709, Rev. Stat.

Writ of error to review, 209 Missouri, 35, dismissed.

Mr. Isaac N. Watson, *Mr. Hannis Taylor*, *Mr. Wash. Adams* and *Mr. Frank Hagerman*, for the plaintiff in error.

Mr. John H. Atwood, *Mr. O. H. Dean* and *Mr. Ira Julian*, for the defendant in error.

Per Curiam. Writ of error dismissed for want of jurisdiction. *Sayward v. Denny*, 158 U. S. 180; *Mutual Life Ins. Co. v. McGrew*, 188 U. S. 291, 307, 308; *State v. Bland*, 186

The judgment of the Circuit Court of Appeals in a criminal case is final, and is no less so because the appellate jurisdiction of this court might have been invoked directly under § 5 of the act of 1891.

Per Curiam.

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Missouri, 691, 701, *Oxley Stave Co. v. Butler County*, 166 U. S. 648, 653; case below, 209 Missouri, 35.

The attention of the state Supreme Court was not called to any Federal question until in the petition for rehearing, and that was too late. *Loeber v. Schroeder*, 149 U. S. 580, 585, and cases.

The judgment rested on non-Federal grounds broad enough to sustain it. 209 Missouri, 35; *Cincinnati Street Ry. Co. v. Snell*, 193 U. S. 30; *Hammond Packing Co. v. Arkansas*, 212 U. S. 322.

MILLS v. JOHNSON.

ERROR TO THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

No. 36. Argued November 12, 1909.—Decided December 13, 1909.

Writ of error to review a judgment of the state court dismissed for want of jurisdiction without opinion on authority of previous decisions.

Mr. Frederic D. McKenney and *Mr. R. S. Neblett* for plaintiffs in error.

Mr. Robert E. Prince, *Mr. Richard Mays* and *Mr. W. S. Simpkins* for defendants in error.

Per Curiam. Writ of error dismissed for want of jurisdiction. *Beale's Heirs v. Johnson*, 45 Tex. Civ. App. 119; 99 S. W. Rep. 1045; *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86; *Same v. Same* (No. 2), 212 U. S. 112; *McCorquodale v. Texas*, 211 U. S. 432; *Cox v. Texas*, 202 U. S. 446; *Harding v. Illinois*, 196 U. S. 78; *Arbuckle v. Blackburn*, 191 U. S. 405.

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Per Curiam.

THOMAS *v.* IOWA.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 448. Argued December 13, 1909.—Decided December 20, 1909.

A writ of error to review a judgment of the highest court of a State, dismissed for want of jurisdiction without opinion.

Writ of error to review, 135 Iowa 717; 109 N. W. Rep. 900, dismissed.

Mr. J. T. Mulvaney for plaintiff in error.

Mr. Charles W. Lyon for defendant in error.

Per Curiam. Writ of error dismissed for want of jurisdiction. No further opinion will be filed.¹

Ex parte UNITED STATES CONSOLIDATED SEEDED
RAISIN COMPANY.

PETITION FOR MANDAMUS.

No. —. Original. Submitted December 20, 1909.—Decided January 3, 1910.

Motion for leave to file petition for a writ of mandamus or certiorari denied.

Mr. John H. Miller for petitioner.

Per Curiam. Motion for leave to file petition for writ of mandamus or certiorari denied.

¹ This case had been once before to this court on writ of error and the writ dismissed. See 209 U. S. 258.

HUSTON, JUDGE, *v.* STATE OF OKLAHOMA *ex rel.*
HASKELL, GOVERNOR.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 325. Motion to dismiss submitted December 20, 1909.—Decided
January 3, 1910.

Writ of error to review judgment of highest court of a State, dismissed
for want of jurisdiction without opinion on authority of previous
decisions.

Writ of error to review 21 Oklahoma, 782, dismissed.

Mr. E. G. Spilman for plaintiffs in error.

Mr. A. C. Cruce for defendant in error.

Per Curiam. Writ of error dismissed for want of jurisdiction. *Haire v. Rice*, 204 U. S. 291; *Corkran Oil Co. v. Arnaudet*, 199 U. S. 146; *Luther v. Borden*, 7 How. 1; *Taylor v. Beckham*, 178 U. S. 548; case below, 21 Oklahoma, 782.

PERTH AMBOY DRY DOCK COMPANY *v.* MONMOUTH
STEAMBOAT COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

No. 609. Submitted December 20, 1909.—Decided January 3, 1910.

Decree of the District Court of the United States affirmed without
opinion.

215 U. S.

Per Curiam.

Mr. James D. Dewell, Jr., and Mr. Avery Fayette Cushman for appellant.

Mr. Charles N. Snyder for appellee.

Per Curiam. Decree affirmed with costs.

KENYON v. FOWLER, RECEIVER OF AMERICAN
EXCHANGE NATIONAL BANK OF SYRACUSE.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT.

No. 87. Argued January 18, 1910.—Decided January 24, 1910.

Judgment of the Circuit Court of Appeals affirming a judgment of the District Court for an assessment of stock of an insolvent national bank made by the Comptroller, affirmed without opinion.
155 Fed. Rep. 107, affirmed.

Mr. Dorr Raymond Cobb for plaintiff in error.

Mr. Leonard C. Crouch for defendant in error.

Per Curiam. Judgment affirmed with costs, and cause remanded to the Circuit Court of the United States for the Northern District of New York. *Keyser v. Hitz*, 133 U. S. 138; *Finn v. Brown*, 142 U. S. 56; *Richmond v. Irons*, 121 U. S. 27; *Matteson v. Dent*, 176 U. S. 521. Opinion below, 155 Fed. Rep. 107; *S. C.*, 83 C. C. A. 567.

DYER *v.* CITY OF MELROSE.

ERROR TO THE SUPERIOR COURT OF THE STATE OF
MASSACHUSETTS.

No. 93. Argued January 20, 1910.—Decided January 24, 1910.

A judgment of the state court sustaining a tax on property of an officer of the United States Navy affirmed on the authority of previous cases.¹

197 Massachusetts, 99, affirmed.

Mr. Chester M. Pratt for plaintiff in error.

Mr. Claude L. Allen for defendant in error.

Per Curiam. Judgment affirmed with costs. *Hibernia Savings Society v. San Francisco*, 200 U. S. 310; *McIntosh v. Aubrey*, 185 U. S. 122; *Railroad Co. v. Peniston*, 18 Wall. 5; case below, *Dyer v. Melrose*, 197 Massachusetts, 99.

BERGER *v.* TRACY.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 97. Submitted January 21, 1910.—Decided January 24, 1910.

A writ of error to review judgment of the highest court of a State dismissed for want of jurisdiction, on authority of *Castillo v. Mc-*

¹ As stated in the brief of defendant in error:

"This case presents the single question whether money which the plaintiff in error has received as salary or emoluments from the Federal Government, after being so received and deposited in national banks, subject to check, is exempt from taxation by local authorities in Massachusetts, on the principle that a State cannot lay a tax upon an office under the Government of the United States, nor upon any means or instruments used solely for the maintenance of the Federal Government or the performance of any of its functions."

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Per Curiam.

Connico, 168 U. S. 674; no Federal question was suggested prior to petition for writ of error.

Writ of error to review 135 Iowa, 597, dismissed.

Mr. Chester C. Cole for plaintiff in error.

No appearance for defendant in error.

Per Curiam. Writ of error dismissed for the want of jurisdiction. *Castillo v. McConnico*, 168 U. S. 674. No Federal question suggested prior to petition for writ of error. Case below, 135 Iowa, 597.

UNITED STATES v. TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS.

CERTIFICATE FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI.

No. 597. Motion to dismiss submitted January 31, 1910.—Decided
January 31, 1910.

A certificate in which there was no opinion, judgment or order of the court below dismissed on authority of *Baltimore & Ohio Railroad Company v. Interstate Commerce Commission*, ante, p. 216.

The Attorney General and *The Solicitor General* for the United States.

No appearance for The Terminal Railroad Association of St. Louis *et al.*

Per Curiam. Certificate dismissed on authority of *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, 215 U. S. 216.